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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,415	07/12/2001	Paul Goldman	OB-200	3576

7590

11/28/2003

Patent Counsel
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EXAMINER

O CONNOR, CARY E

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 11/28/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,415

Applicant(s)

GOLDMAN

Examiner

Cary E. O'Connor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-21 and 23-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-21 and 23-25 is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 26 is/are rejected.
- 7) ☒ Claim(s) 27-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masden (3,971,136) in view of Amadera (4,906,187). Masden shows an oral care device comprising particulate (column 1, line 55), a handle 44, and a conduit 42 for supplying water, particulate and pressurized air 39 to the handle (see column 3, lines 4-6). The air supplied to the container serves two purposes: (1) to aerate the slurry and keep the particles in suspension and (2) to force the aerated slurry out of the outlet port by building up air pressure above the slurry. Masden does not include a toothbrush on the end of the handle or a switch for controlling the flow. Amadera shows an oral care device comprising a handpiece having a head with bristle (see Fig. 4) and a switch 14c located in the handpiece. As to claims 3-5, note that the conduit is located in the handle and the head (see Figure 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide bristles and a switch on the handle of Masden, as taught by Amadera, in order to enhance the cleaning ability of the device

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and enable the user to easily control the flow of the fluid. As to claims 3-5, note that the conduit of Amadera is located in the handle and the head (see Figure 4).

Claims 1, 3-6 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blake (5,203,698) in view of Amadera (4,322,207). Blake shows an oral care device comprising an applicator 34 having a head 33 and a conduit 24 for supplying water particulate and pressurized air to the head. A switch 29 is included in the handle for controlling the water, particulate and pressurized air to the head. Amadera shows an oral care device wherein the head includes bristles. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide bristle on the head of Blake, as taught by Amadera, in order to enhance the cleaning ability of the device. As to claim 26, note the water and slurry stored in the handle of Blake.

Allowable Subject Matter

Claims 7-21, 23-25 are allowed.

Claims 27-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed September 2, 2003 have been fully considered but they are not persuasive.

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In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argues that it would not have been obvious to one of ordinary skill in the art to provide bristles on the head of Blake as taught by Amadera because the Blake's device would have to be redesigned to accommodate a toothbrush. The examiner maintains that little or no modification of the Blake device would be necessary. Either the angle of the nozzle could be changed so that it is more or less coaxial to the axis of the canister, or bristles could be attached to the end as taught by Kamen et al (6,375,459). Either way would result in a usable device with little modification of the angle of the nozzle which is well within the skill of one in the art.

Applicant argues that Madsen '136 does not allow air to exit the container because the outlet is at the bottom of the container. However, it is held that one of the purposes of the air is to aerate the slurry and keep the particles in suspension. Accordingly, some air would inherently be entrained in the slurry upon its exit from the container. Applicant argues that any air entrained in the slurry would not be pressurized. It is held that anything coming out of the container would be pressurized,

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including the air, because of the air pressure build up at the top of the container which forces the slurry into the nozzle.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 703-308-2701. The examiner can normally be reached on M-Th, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 703-308-0858. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-2708 for regular communications and 703-308-2708 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Cary E. O'Connor
Primary Examiner
Art Unit 3732

ceo
November 28, 2003